

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Randolph Hammock

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RAYMOND BROWN

UNLIMITED JURISDICTION
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RAYMOND BROWN,

Plaintiff,

vs.

CITY OF LOS ANGELES, a municipal entity;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 20STCV19714

COMPLAINT FOR DAMAGES:

- 1. RETALIATION IN VIOLATION OF
THE CALIFORNIA FAIR
EMPLOYMENT AND HOUSING
ACT (GOV. CODE § 12940, ET
SEQ.)**
- 2. WHISTLEBLOWER
RETALIATION (LABOR CODE §
1102.5)**

DEMAND FOR JURY TRIAL

GENERAL ALLEGATIONS

1. At all times relevant hereto, RAYMOND BROWN ("Plaintiff") was and is a resident of the County of Los Angeles, State of California, and was and is a competent adult.

2. At all times relevant hereto, Plaintiff was a sworn peace officer employed by the Los Angeles Police Department.

3. Plaintiff is informed and believes and thereupon alleges that Defendants DOES 1 through 100, inclusive, and each of them, were, all times relevant hereto,

1 residents of the County of Los Angeles, State of California, and were agents, partners,
2 and/or joint venturers of Defendants and/or each other, acting as supervisors, managers,
3 administrators, owners, and/or directors or in some other unknown capacity.

4 4. The true names and capacities of Defendants DOES 1 through 100, and
5 each of them, whether individual, corporate, associate or otherwise, are unknown to
6 Plaintiff at this time, who therefore sues said Defendants by such fictitious names.
7 Plaintiff will file DOE amendments, and/or ask leave of court to amend this complaint to
8 assert the true names and capacities of these Defendants when they have been
9 ascertained. Plaintiff is informed and believes, and upon such information and belief
10 alleges, that each Defendant herein designated as a DOE was and is in some manner,
11 negligently, wrongfully, or otherwise, responsible and liable to Plaintiff for the injuries and
12 damages hereinafter alleged, and that Plaintiff's damages as herein alleged were
13 proximately caused by their conduct.

14 5. Plaintiff is informed and believes, and thereupon alleges, that at all times
15 material herein the Defendants, and each of them, were the agents, servants, and
16 employees, or ostensible agents, servants, or employees of each other Defendant, and as
17 such, were acting within the course and scope of said agency and employment or
18 ostensible agency and employment, except on those occasions when Defendants were
19 acting as principals, in which case, said Defendants, and each of them, were negligent in
20 the selection, hiring, and use of the other Defendants.

21 6. Plaintiff is further informed and believes, and thereupon alleges, that at all
22 times relevant hereto, Defendants, and each of them, acted in concert and in furtherance
23 of the interests of each other Defendant.

24 7. This court is the proper court because injury or damage to Plaintiff occurred
25 in its jurisdictional area.

26 8. Plaintiff has complied with and/or exhausted any applicable claims statutes
27 and/or administrative and/or internal remedies and/or grievance procedures, or is excused
28 from complying therewith.

FACTUAL ALLEGATIONS

9. Plaintiff has been employed as a sworn peace officer in the Los Angeles Police Department (the “Department” or “LAPD”) since in or around 2005, and he holds the rank of Police Officer II.

10. Since in or around 2015, Plaintiff has been assigned to the Online Unit in LAPD’s Media Relations Division.

11. At all times relevant hereto, Josh Rubenstein was and is the Director in charge of Media Relations Division.

12. Media Relations Division was and is housed on the second floor of the LAPD Headquarters building. In 2017, the Online Unit—where Plaintiff was assigned—had a small office on the second floor. The remainder of the employees in the Division were housed in a large, open office space connected to the Online Unit office by a short hallway.

13. On a date in or around late 2017, Director Josh Rubenstein greeted the officers in Media Relations Division’s open office space as “ladies, gents, and officers” and, immediately thereafter, approached the Online Unit office and stated, “How are you boys?” At the time, only Plaintiff and Police Officer III Lyle Knight were present in the Online Unit office. Both Plaintiff and Officer Knight are African-American.

14. Within approximately one week, Rubenstein again asked Plaintiff and Officer Knight, “How are you boys?”

15. Since the term “boy” has historically been used to degrade and even dehumanize African-American men, Plaintiff and Officer Knight politely asked Rubenstein on that second occasion not to address them as “boys”.

16. Rubenstein stated dismissively that he would be mindful of their request, and then walked away visibly angry.

17. Plaintiff and Officer Knight reported Rubenstein’s statements to their immediate supervisor, Sgt. Frank Preciado.

18. Plaintiff reasonably believed that his complaints about Rubenstein

1 addressing him and Officer Knight as “boys” disclosed violations of California *Government*
2 *Code* section 12940, et seq., and other applicable federal, state, and local statutes and
3 regulations.

4 19. Just days later, Rubenstein addressed Plaintiff and Officer Knight as “boys”
5 for a third time. This time, however, Rubenstein did so in a snide and mocking tone of
6 voice. Moreover, Rubenstein said “boys” so loudly that even Sgt. Preciado, who was
7 sitting both outside of and a significant distance away from the Online Unit office, heard it.

8 20. Sgt. Preciado reported Rubenstein’s demeaning statements to Captain
9 Patricia Sandoval.

10 21. Within approximately one week, Rubenstein addressed Plaintiff and Officer
11 Knight as “boys” for a fourth time.

12 22. On this occasion, Captain Sandoval immediately approached Plaintiff and
13 Officer Knight from her office across the hall.

14 23. Captain Sandoval told them that she had heard Rubenstein’s comment; that
15 she was sorry; and that she had told Rubenstein it was “not cool” to address Plaintiff and
16 Officer Knight in such a manner.

17 24. Immediately after Rubenstein’s fourth time addressing Plaintiff and Officer
18 Knight as “boys”, both Rubenstein and Captain Sandoval became cold and dismissive
19 toward Plaintiff and Officer Knight.

20 25. In 2018, both Rubenstein and Captain Sandoval made statements indicating
21 that Plaintiff and Officer Knight would not advance within Media Relations Division, and
22 that they should leave the Division.

23 26. In or around October of 2018, Plaintiff applied for two Police Officer III
24 upgrade positions that had been advertised in Media Relations Division.

25 27. Plaintiff was the most qualified officer for the positions, but Rubenstein and
26 Captain Sandoval passed over Plaintiff and selected less qualified officers instead.

27 28. Shortly after Plaintiff was rejected for the positions, a supervisor close to
28 Captain Sandoval told Plaintiff that he (Plaintiff) had been the most qualified candidate

1 and that in any other division, he would have been selected.

2 29. In April 2019, Sgt. Frank Preciado filed a lawsuit against the LAPD and the
3 City of Los Angeles for race discrimination, race harassment, and retaliation in violation of
4 the California Fair Employment and Housing Act.

5 30. The allegations in Sgt. Preciado's lawsuit related to orders given by Captain
6 Sandoval in 2017 and 2018 prohibiting the use of Spanish within Media Relations
7 Division, and actions taken against Preciado after he complained about those orders.

8 31. Sgt. Preciado's lawsuit received extensive media coverage in or around
9 June 2019.

10 32. Upon information and belief, Department supervisors, including Josh
11 Rubenstein, formed the belief that Plaintiff would support Sgt. Preciado in his lawsuit by
12 testifying truthfully about the actions Department supervisors took against Preciado, which
13 actions Plaintiff reasonably believed violated *Government Code* section 12940, et seq.,
14 and other applicable federal, state, and local statutes and regulations.

15 33. In or around July of 2019, Plaintiff applied for another Police Officer III
16 upgrade position within Media Relations Division. Once again, Plaintiff was the most
17 qualified officer for the position, but was rejected in lieu of a less qualified officer.

18 34. After Plaintiff was rejected for the upgrade position, a Media Relations
19 Division supervisor told Plaintiff that in making their selection decision, the supervisors
20 had to consider the fact that Sgt. Frank Preciado's lawsuit was pending, and that Plaintiff
21 is in Preciado's unit—referring to the fact that the supervisors believed Plaintiff would
22 testify on behalf of Preciado in his lawsuit.

23 35. As a result of the Department's actions against Plaintiff, he has lost and will
24 continue to lose income, overtime, pension, and other privileges and benefits. In addition,
25 Plaintiff has sustained and will continue to sustain damage to his reputation, and his ability
26 to advance, promote, and/or obtain coveted positions in the future has been and/or will
27 continue to be adversely affected.

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FIRST CAUSE OF ACTION
FOR RETALIATION IN VIOLATION OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT (GOV. CODE § 12940, ET SEQ.)
AGAINST ALL DEFENDANTS, AND EACH OF THEM

36. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 35, and incorporates same by reference as though set forth fully herein.

37. Plaintiff duly filed an administrative complaint with the California Department of Fair Employment and Housing on October 21, 2019, which was amended on May 22, 2020. The complaint substantially alleged the acts and conduct of Defendants as described herein. The Department issued a "right-to-sue" notice on or about October 21, 2019, a true and correct copy of which is attached hereto as Exhibit "1."

38. Plaintiff opposed practices forbidden by *Government Code* section 12940, et seq., by, *inter alia*, opposing racial discrimination and harassment.

39. In addition, Defendants, and each of them, believed that Plaintiff would testify as a witness in support of Sgt. Frank Preciado's allegations of and/or civil action for race discrimination, race harassment, and retaliation in violation of the FEHA.

40. Defendants, and each of them, and their respective supervisors, managers, officers, agents, and employees, subjected Plaintiff to multiple adverse employment actions, stand-alone actions and/or an ongoing series of actions, which have caused substantial and material adverse effects on the terms and conditions of Plaintiff's employment.

41. Plaintiff's protected activities and/or Defendant's belief that Plaintiff would testify in support of Sgt. Frank Preciado's FEHA claims were a substantial motivating factor for the adverse employment actions of Defendants, and each of them.

42. Said actions and conduct of Defendants, and each of them, consisting of the aforementioned retaliation against Plaintiff, constituted unlawful employment practices under California *Government Code* section 12940, et seq.

1 43. The aforementioned unlawful employment practices on the part of the
2 Defendants, and each of them, were a substantial factor in causing damages and injuries
3 to Plaintiff as set forth below.

4 44. As a result of the aforesaid unlawful acts of Defendants, and each of them,
5 Plaintiff has lost and may continue to lose income, wages, earnings, earning capacity,
6 overtime, pension, benefits, and other economic loss, in an amount to be proven at time of
7 trial.

8 45. As a further legal result of the conduct of Defendants, and each of them,
9 Plaintiff has suffered and will continue to suffer physical, mental, and emotional injuries,
10 pain, distress, suffering, anguish, fright, nervousness, grief, anxiety, worry, shame,
11 mortification, injured feelings, shock, humiliation and indignity, as well as other unpleasant
12 physical, mental, and emotional reactions, damages to reputation, and other non-
13 economic damages, in a sum to be ascertained according to proof. Said damages are of
14 the type that any person would suffer as result of the illegal and wrongful conduct of
15 Defendants. Plaintiff does not claim that he has suffered any psychiatric illness as a result
16 of the conduct of Defendants.

17 46. As a further legal result of the conduct of Defendants, and each of them,
18 Plaintiff suffered other incidental and consequential damages, in an amount according to
19 proof.

20 47. As a further legal result of the conduct of Defendants, and each of them,
21 Plaintiff is entitled to attorneys' fees pursuant to *Government Code* section 12965 and
22 costs in an amount according to proof.

23 48. As a further legal result of the conduct of Defendants, and each of them,
24 Plaintiff is entitled to prejudgment interest pursuant to California *Civil Code* section 3287
25 and/or any other provision of law providing for prejudgment interest.

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SECOND CAUSE OF ACTION
FOR WHISTLEBLOWER RETALIATION (*LABOR CODE* § 1102.5)
AGAINST ALL DEFENDANTS, AND EACH OF THEM

49. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 35 above, and incorporates same by reference as though set forth fully herein.

50. Plaintiff engaged in legally protected activities under *Labor Code* sections 1102.5 and 1102.6, by disclosing to the City of Los Angeles and Los Angeles Police Department information which Plaintiff had reasonable cause to believe disclosed violations of *Government Code* sections 12940, et seq., and other applicable local, state and/or federal statutes and regulations.

51. In addition, Defendants, and each of them, believed that Plaintiff would disclose information in connection with Sgt. Frank Preciado's lawsuit that Plaintiff reasonably believed to disclose violations of *Government Code* sections 12940, et seq., and other applicable local, state and/or federal statutes and regulations, thereby entitling Plaintiff to the protections of *Labor Code* sections 1102.5 and 1102.6.

52. Defendants, and each of them, and their respective supervisors, managers, officers, agents, and employees, retaliated against Plaintiff for engaging in activities protected under *Labor Code* section 1102.5 and/or because they believed that Plaintiff would engage in activities protected under *Labor Code* section 1102.5 in connection with Sgt. Frank Preciado's lawsuit, by subjecting him to multiple adverse employment actions, stand-alone actions and/or an ongoing series of actions, which have caused substantial and material adverse effects on the terms and conditions of Plaintiff's employment. Said actions of retaliation were a direct violation of *Labor Code* section 1102.5, and pursuant to *Labor Code* section 1102.6, Defendants, and each of them, have the burden of proof to demonstrate by clear and convincing evidence that each of the adverse employment actions alleged herein would have occurred for legitimate, independent reasons even if Plaintiff had not engaged in activities protected by *Labor Code* section 1102.5.

1 53. A contributing cause for Defendants, and each of them, engaging in the
2 foregoing adverse employment actions against Plaintiff was to retaliate against Plaintiff for
3 engaging in the above-described protected activities and/or for the protected activities that
4 Defendants, and each of them, anticipated Plaintiff would engage in.

5 54. As a result of the aforesaid unlawful acts of Defendants, and each of them,
6 Plaintiff has lost and may continue to lose income, wages, earnings, earning capacity,
7 overtime, pension, benefits, and other economic loss, in an amount to be proven at time of
8 trial.

9 55. As a further legal result of the conduct of Defendants, and each of them,
10 Plaintiff has suffered and will continue to suffer physical, mental, and emotional injuries,
11 pain, distress, suffering, anguish, fright, nervousness, grief, anxiety, worry, shame,
12 mortification, injured feelings, shock, humiliation and indignity, as well as other unpleasant
13 physical, mental, and emotional reactions, damages to reputation, and other non-
14 economic damages, in a sum to be ascertained according to proof. Said damages are of
15 the type that any person would suffer as result of the illegal and wrongful conduct of
16 Defendants. Plaintiff does not claim that he has suffered any psychiatric illness as a result
17 of the conduct of Defendants.

18 56. As a further legal result of the conduct of Defendants, and each of them,
19 Plaintiff suffered other incidental and consequential damages, in an amount according to
20 proof.

21 57. As a further legal result of the conduct of Defendants, and each of them,
22 Plaintiff is entitled to attorneys' fees pursuant to *C.C.P.* 1021.5, and costs in an amount
23 according to proof.

24 58. As a further legal result of the conduct of Defendants, and each of them,
25 Plaintiff is entitled to prejudgment interest pursuant to California *Civil Code* section 3287
26 and/or any other provision of law providing for prejudgment interest.

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1 **PRAYER**

2 **WHEREFORE**, Plaintiff seeks judgment against all Defendants, and each of them,
3 on all causes of action, for:

4 1. Physical, mental, and emotional injuries, pain, distress, suffering, anguish,
5 fright, nervousness, grief, anxiety, worry, shame, mortification, injured feelings, shock,
6 humiliation and indignity, as well as other unpleasant physical, mental, and emotional
7 reactions, damages to reputation, and other non-economic damages, in a sum to be
8 ascertained according to proof;

9 2. Loss of wages, income, earnings, earning capacity, overtime, pension,
10 benefits, and other economic damages in a sum to be ascertained according to proof;

11 3. Other actual, consequential, and/or incidental damages in a sum to be
12 ascertained according to proof;

13 4. Attorneys' fees and costs of suit pursuant to *California Government Code*
14 Section 12965(b), *C.C.P.* 1021.5, and other authorities;

15 5. Costs of suit herein incurred;

16 6. Pre-judgment interest;

17 7. Such other and further relief as the Court may deem just and proper.
18

19 Dated: May 22, 2020

LAW OFFICES OF GREGORY W. SMITH

20
21 By:

Diana Wells

22 GREGORY W. SMITH
23 DIANA WANG WELLS
24 LEILA K. AL FAIZ
25 Attorneys for Plaintiff
26 RAYMOND BROWN
27
28

EXHIBIT “1”



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 21, 2019

Raymond Brown
9100 Wilshire Blvd., Suite 345E
Beverly Hills, California 90212

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 201910-07889911
Right to Sue: Brown / City of Los Angeles / Los Angeles Police Department

Dear Raymond Brown,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective October 21, 2019 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing